

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SAMUEL L. ROBERTS,

Plaintiff,

-VS-

LOS ALAMOS NATIONAL SECURITY, LLC,
AWE, PLC, and
MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Defendants.

**ANSWER TO THIRD-
PARTY COMPLAINT WITH
COUNTERCLAIMS**

MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Third-Party Plaintiff,

Civil Case No.: 11-cv-6206(L)

-VS-

UNIVERSITY OF ROCHESTER,

Third-Party Defendant.

Third-Party Defendant, University of Rochester (the “University” or “Third-Party Defendant”), by its attorneys, Ward Greenberg Heller & Reidy, LLP, hereby answers the Third-Party Complaint of Third-Party Plaintiff Massachusetts Institute of Technology (“MIT” or “Third-Party Plaintiff”), without waiving and expressly reserving all rights that it may have to seek relief by appropriate motions, as follows:

1. Admits the allegations in paragraphs 1, 2, 7, 12 and 13 of the Third-Party Complaint.
2. Paragraphs 3, 4 and 5 of the Third-Party Complaint are summary paragraphs to which no answer is required. To the extent an answer is required, the University denies the

allegations except admits that Plaintiff has served a Complaint in the action against the Third-Party Plaintiff arising from an incident at the Laboratory for Laser Energetics on August 6, 2008 and that the underlying Complaint speaks for itself.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Third-Party Complaint.

4. Admits the allegations in paragraphs 8, 9 and 10 of the Third-Party Complaint, except denies knowledge or information sufficient to identify the specific “equipment that caused plaintiff’s injury” and as a result, under whose control that equipment was at the time of the incident alleged in the Complaint.

5. Denies the allegations in paragraphs 11, 14, 15, 16, 17 and 18 of the Third-Party Complaint.

6. Denies each and every allegation in the Third-Party Complaint not specifically addressed above.

FIRST AFFIRMATIVE DEFENSE

7. The University hereby adopts as its own each and every affirmative defense set forth in Defendant/Third-Party Plaintiff MIT’s Answer to Plaintiff’s Amended Complaint.

SECOND AFFIRMATIVE DEFENSE

8. The Third-Party Complaint fails to state a claim upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

9. Upon information and belief, the injuries and damages alleged in the Amended Complaint and Third-Party Complaint were caused by the culpable conduct of persons over

whom the University has no control, and the University is entitled to apportionment as against those entities if the Plaintiff or Third-Party Plaintiff recovers.

FOURTH AFFIRMATIVE DEFENSE

10. Pursuant to CPLR Article 16, the liability of the University for non-economic loss shall not exceed its equitable share as determined by the Court or jury after assessing the relative culpability of each person/party causing or contributing to the total liability for non-economic loss.

FIRST COUNTERCLAIM (Contribution)

11. If the University is held liable to the Third-Party Plaintiff, such liability arose from the negligent or careless acts of the Third-Party Plaintiff, and the University is entitled to contribution from the Third-Party Plaintiff for the amount of any verdict or judgment that may be recovered.

SECOND COUNTERCLAIM (Indemnification)

12. The University is entitled to indemnification, either contractual or common law, from the Third-Party Plaintiff.

WHEREFORE, the University demands judgment dismissing the Third-Party Complaint, or in the alternative, demands that the percentage of liability attributable to all parties be determined, and that any judgment against the University be reduced by the proportionate share of culpability attributable to Plaintiff or the Third-Party Plaintiff, together with the costs and disbursements of this action.

Dated: January 17, 2012

Respectfully submitted,

UNIVERSITY OF ROCHESTER

By its attorneys,

/s/ Eric J. Ward

Eric J. Ward
Attorneys for Third-Party Defendant,
University of Rochester
Ward Greenberg Heller & Reidy LLP
300 State Street
Rochester, New York 14614
Tel.: (585) 454-0714
Fax: (585) 231-1921
eward@wardgreenberg.com

TO: David Rothenberg, Esq.
Geiger and Rothenberg, LLP
Attorneys for Third-Party Plaintiff
Massachusetts Institute of Technology
45 Exchange Street
Suite 800
Rochester, New York 14614
Tel: (585) 232-1946
drothenberg@geigroth.com

cc: Christine Tramontano, Esq.
Sean C. Sheely, Esq.
Philip T. Evans, Esq.

Holland & Knight LLP
Attorneys for Defendant
AWE, PLC
31 West 52nd Street
New York, New York 10019
Tel: (212) 513-3200
Fax: (212) 385-9010
sean.sheely@hklaw.com
christine.tramontano@hklaw.com

2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, District of Columbia 20006

Tel: (202) 457-7043
Fax: (202) 955-3000
philip.evans@hklaw.com

Beryl Nusbaum, Esq.
Greta K. Kolcon, Esq.

Woods Oviatt Gilman LLP
*Attorneys for Defendant Los Alamos,
National Security, LLC*
700 Crossroads Building
Two State Street
Rochester, New York 14614
Tel: (585) 987-2800
bnusbaum@woodsobviatt.com
gkolcon@woodsobviatt.com

Louis J. Micca, Esq.
Attorney for Plaintiff
Samuel L. Roberts
11 State Street
Pittsford, New York 14534
Tel: (585) 899-6031
Fax: (585) 383-6357
lmicca@msn.com

CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2012, I electronically filed the foregoing Answer to the Third-Party Complaint with Counterclaims with the Clerk of the District Court using the CM/ECF system, which sent notice to:

- 1) Attorney for Third-Party Plaintiff Massachusetts Institute of Technology: David Rothenberg, Esq. (drothenberg@geigroth.com);
- 2) Attorney for Plaintiff: Louis J. Micca, Esq. (lmicca@msn.com);
- 3) Attorneys for Defendant Los Alamos National Security, LLC: Beryl Nusbaum, Esq., Greta K. Kolcon, Esq. (bnusbaum@woodsobviatt.com; gkolcon@woodsoviatt.com); and
- 4) Attorneys for Defendant AWE, PLC: Sean C. Sheely, Esq., Christine Tramontano, Esq., Philip T. Evans, Esq. (sean.sheely@hklaw.com; christine.tramontano@hklaw.com; philip.evans@hklaw.com).

Dated: January 17, 2012

/s/ Eric J. Ward
Eric J. Ward
Attorneys for Third-Party Defendant,
University of Rochester
Ward Greenberg Heller & Reidy LLP
300 State Street
Rochester, New York 14614
Tel.: (585) 454-0714
Fax: (585) 231-1921
eward@wardgreenberg.com